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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROBERT PATTON et al., Plaintiffs and Appellants, v. STRABALA, RAMIREZ & ASSOCIATES et al., Defendants and Respondents.	D038186 (Orange County Super. Ct. No. 776949)

APPEAL from a judgment of the Superior Court of Orange County, Honorable David R. Chafee, Judge. Affirmed.

In this action by plaintiffs and appellants Gerald Fitch and Robert Patton for damages for inducing breach of contract, wrongful interference with contractual relations, negligent interference with prospective economic advantage and intentional infliction of emotional distress, nonsuit was granted in favor of defendants and respondents Strabala, Ramirez & Associates, an accounting firm and its former employee, Henry Mendoza

(collectively SRA). Fitch and Patton worked at Startronix International and Startronix Incorporated (collectively Startronix) respectively, in financial management positions, holding five-year employment contracts which were terminated early by Startronix. Before they were fired, SRA was brought in as the new auditor for Startronix, replacing another firm, BDO Seidman (BDO) (not a party to the action), who quit amid doubts about the ability of its client Startronix to prepare reliable financial statements. In their complaint as amended, Fitch and Patton alleged SRA required Startronix to fire them as a condition of performing the audit, thereby causing their termination.

PROCEDURAL BACKGROUND

Fitch and Patton (sometimes collectively plaintiffs) originally filed this complaint against Startronix and its president, Greg Gilbert, for breach of contract, breach of implied covenant of good faith and fair dealing, and termination in violation of public policy. The third amended complaint added SRA as a defendant and alleged against it four causes of action: inducing breach of contract, wrongful interference with contractual relations, negligent interference with prospective economic advantage, and intentional infliction of emotional distress.

One week before trial, Fitch and Patton dismissed defendants Startronix and Gilbert and related causes of action. As against remaining defendants SRA, Fitch and Patton presented their cases together, and the same defense counsel represented Mendoza and Strabala, Ramirez & Associates. After Fitch and Patton presented their evidence at a jury trial, SRA moved for nonsuit. (Code Civ. Proc., § 581c, subd. (a).) The court granted the motion. Fitch and Patton appealed.

DISCUSSION

I

APPLICABLE STANDARDS

We review the grant of nonsuit by examining the evidence in the light most favorable to the plaintiffs. (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 839.) In interpreting the evidence, all presumptions, inferences and doubts must be resolved in favor of the plaintiff. (*Ibid.*) The court may affirm the judgment if the plaintiff's proof "raises nothing more than speculation, suspicion, or conjecture[;] reversal is warranted if there is 'some substance to plaintiff's evidence upon which reasonable minds could differ.' [Citation.]" (*Carson, supra,* at p. 839.) Further, the reviewing court only considers the grounds stated by the defendant for the motion. (*Ibid.*) In addition, if the trial court's exclusion of the plaintiff's evidence was prejudicial error and it is determined on review that the evidence would have supported a plaintiff's verdict, a judgment of nonsuit is reversible. (*Lawless v. Calaway* (1944) 24 Cal.2d 81, 88.)

II

FACTS SHOWN AT TRIAL

Startronix Inc. was a subsidiary of Startronix International, an electronics and communications company, and Fitch, Patton, Gilbert and James Valle were managerial employees. Gilbert was president of Startronix International. Fitch was hired in 1995 as the chief operating officer of Startronix International, with a five-year employment contract. Fitch reported to Gilbert and was on the board of directors. Valle was the chief

financial officer (CFO) of Startronix International. Initially he reported to Fitch, but subsequently he reported to Gilbert.

Plaintiff Patton worked for Startronix, Inc. as an independent contractor in the capacity of CFO, starting approximately in 1994. He was hired as an employee in 1996 with a five-year employment contract. Patton reported to Gilbert.

Startronix had difficulties with its year-end 1996 audit. BDO, which had previously handled Startronix's audits, refused to complete the audit, which was required because of Startronix's status as a publicly held company. In the Form 8-K filing required by the Securities and Exchange Commission (SEC), BDO stated its main reason for withdrawal was that "the internal controls necessary for the Company to develop reliable financial statements do not exist." After interviewing other accounting firms who declined the engagement, Startronix reached an agreement with SRA to conduct the audit. Dak Sanders performed accounting work for SRA and completed most of the work for the audit of Startronix.

Three documents related to the audit are pertinent here. First, the October 21, 1996 engagement letter from SRA stated that SRA's commitment to perform the audit was subject to Startronix's agreement to "implement certain recommendations on internal control and structure." Second, Rutan & Tucker, Startronix's lawyers, wrote a letter (Attorney Letter) dated October 25, 1996 to SRA, stating that Startronix's board intended to fire Fitch and Patton and increase the number of people on the board. Third, on December 6, Fitch, Patton, Gilbert and Valle signed a management representation letter to SRA, which contained declarations about company management. Included was a

statement that irregularities concerning management with "significant roles in the internal control structure . . . have been identified and disclosed . . . I (we) will take appropriate action to correct these irregularities."

Fitch's and Patton's employment was terminated in January 1997. Upon termination, both claimed Gilbert handed them a copy of the Attorney Letter. The copy of the letter they received had a fax footer with SRA's name, a telephone number, a date, a time and a page number. At trial, Gilbert testified that he fired Fitch and Patton because "[t]o bring an auditor on board, we had to terminate certain personnel on our management team."

Valle approached Sanders about working for Startronix before Fitch and Patton were fired. Sanders was hired in January 1997 and worked for two months without pay before returning to SRA.

III

ISSUES ON APPEAL

Fitch and Patton contend that a judgment of nonsuit was improperly granted. Further, they allege that the evidentiary rulings on the Attorney Letter were erroneous. Bound as we are to look solely to those grounds that SRA stated in its motion for nonsuit, (*Carson*, *supra*, 36 Cal.3d at p. 839), we examine the four issues argued: (a) no intentional interference with contract occurred; (b) there is no admissible negligence theory; (c) no outrageous conduct was shown to support a claim of damages for intentional infliction of emotional distress; and (d) there was no evidence of malice, oppression or fraud.

A. Nonsuit grounds: No Intentional Interference With Contract Occurred

Fitch and Patton alleged wrongful interference with contractual relations and inducing breach of contract. Wrongful interference with contractual relations requires "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 343-344.) An actual breach is not required, only interference with or disruption of contractual relations. (*Ibid.*) Here, it was not disputed that Fitch and Patton had valid five-year employment contracts with Startronix of which SRA was aware because of its due diligence conducting the audit. The issue at trial as it is here is whether SRA performed any intentional acts to interfere with the employment contracts.

Inducing breach of contract is similar but distinct. "[A]n action will lie for inducing breach of contract by a resort to means in themselves unlawful . . . [or] by the use of moral, social, or economic pressures, in themselves lawful, unless there is sufficient justification for such inducement." (*Imperial Ice Co. v. Rossier* (1941) 18 Cal.2d 33, 35.) In effect, the plaintiff must prove that the defendant intended his wrongful acts to induce a breach of the contract, which is a higher burden than interfering with a contract. Thus "[t]he act of inducing a breach must be an intentional one. If the actor had no knowledge of the existence of the contract or his actions were not intended to induce a breach, he cannot be held liable though an actual breach results from his lawful and proper acts." (*Id.* at p. 37.) Here, SRA was aware of the employment

contracts between Startronix and Fitch and Patton. The issue at trial as it is here is whether SRA intentionally performed acts to induce a breach.

To analyze these issues, we now set forth a summary of Fitch's and Patton's evidence. At trial, Fitch and Patton sought to establish that the engagement letter from SRA, the Attorney Letter, the management representation letter, related testimony, and the actions of Sanders met both the lower standard of actionable interference with contract and the higher standard of inducement to breach contract. However, much of the testimony and some of the documentary evidence relied upon had evidentiary defects, which we now discuss. We shall conclude that the trial court judge made proper rulings on these issues, and reversal is not justified.

The Engagement Letter

Mendoza wrote the engagement letter, dated October 21, 1996, on behalf of his then employer, SRA. The letter did not mention firing Fitch and Patton. One paragraph stated "[SRA's] engagement is subject to . . . [Startronix's] agreement to implement certain recommendations on internal control and structure. These items will be discussed with management and agreed to at the time of accepting [the] engagement." Fitch and Patton contended at trial that the agreement mentioned was to fire them, and offered the testimony of Mendoza, Sanders and Gilbert in support of their theory.

Mendoza testified that at the initial meeting Startronix told him of a plan that included firing Fitch and Patton. However, the motion in limine prior to trial sought to exclude any testimony that Valle or Gilbert had decided or recommended Fitch's and Patton's termination. One of the justifications offered for the motion was that such

testimony could be hearsay. The trial court denied the pretrial motion because the subject evidence bore upon one of the critical issues in the case.

Mendoza's testimony presents an evidentiary issue. Hearsay is generally inadmissible and is "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200.) As to the motion in limine, a motion properly made operates as a motion to exclude, and for the issue to be preserved on appeal, no further objection during trial need be made when the motion is denied. (*Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1184.)

Mendoza's testimony was hearsay and, as such, is inadmissible. He claimed Startronix's representatives told him that Fitch and Patton would be fired, the fact at issue. With respect to the motion in limine, the pretrial ruling was proper because testimony that Gilbert or Valle had decided to terminate Fitch or Patton had direct bearing upon whether SRA could be held liable for interference. However, since the testimony proffered was that of Mendoza concerning what he was told by Gilbert or Valle, it was properly excluded at trial.

In addition, Mendoza stated that if Startronix did not take certain actions, SRA had the option of withdrawing from the audit. He testified about the actions of Startronix in preparation for the audit; hiring more people, purchasing hardware and software, reconstructing accounting systems, and performing reconciliations. Sanders, the other key SRA employee, was not present at the initial meeting between Mendoza and Startronix. At trial, Sanders responded negatively when asked if he believed the

paragraph in the engagement letter meant SRA required Startronix to fire Fitch and Patton.

Gilbert testified, "In order to bring an auditor on board, we had to terminate certain personnel on our management team." Gilbert testified that the paragraph in the engagement letter led him to believe that "certain personnel" included Fitch and Patton. This testimony must be evaluated in light of the previous proceedings. Earlier, when asked about why the auditor was brought on board, the trial judge instructed Gilbert on the hearsay rule. (Evid. Code, § 1200.) Gilbert then stated, "I wouldn't know how to answer it then, because my decisions were based upon. . . ." Counsel then rephrased the question and Gilbert discussed terminating certain personnel on the management team. However, Gilbert testified that no one at SRA ever spoke to him about Fitch's and Patton's job performance; that if such a conversation occurred, it was between SRA and Valle. Accordingly, on this record, Gilbert lacked direct knowledge of SRA making any comment about Fitch's and Patton's termination. Gilbert's "knowledge" was based on inadmissible hearsay from something that Valle told him. Thus, Gilbert's testimony as to his beliefs do not support plaintiffs' case. Even though it might have created an inference of interference by SRA, it is not sufficient to establish that inference in light of all the testimony.

In sum, all that exists is an engagement letter that does not mention plaintiffs or support an inference that SRA was the causative factor for firing plaintiffs. Mendoza testified about the actions taken by Startronix to prevent SRA from possibly withdrawing from the audit, which was not shown to include firing Fitch and Patton. Neither Sanders'

nor Gilbert's testimony supports plaintiffs' theories. Thus, the letter and related testimony fail to provide evidence of intentional interference or inducement on the part of SRA to have Fitch and Patton fired.

The Attorney Letter

The trial court ruled on two evidentiary issues related to the Attorney Letter, both of which are raised by this appeal. The first was whether the Attorney Letter should be admissible for all purposes. Startronix's lawyers, Rutan & Tucker, wrote the Attorney Letter and sent it to SRA. The letter stated the officers of Startronix informed Rutan & Tucker that Fitch and Patton would be fired, that Fitch would not be nominated for re-election to the board and that the number of people on the board may be increased. Although the original Attorney Letter was not offered, a copy, which Fitch and Patton claimed they were given when Gilbert fired them, was offered into evidence.

Fitch and Patton wanted the Attorney Letter admitted to show that it was the same agreement referred to in the engagement letter dated four days prior, and that the actions that took place later demonstrated Startronix's acceptance of certain SRA requirements for the audit. In opposition, SRA sought to have the Attorney Letter limited in its admissibility and proposed a limiting instruction to the jury. SRA saw the Attorney Letter as a confirmation of what Mendoza was told about the intentions of Startronix management. SRA asserted that any further link between the Attorney Letter and SRA was hearsay.

The trial court believed there was no evidentiary foundation to link the Attorney Letter to SRA such that the letter was not probative of whether SRA caused the

termination. Thus, the letter was admitted for the limited purpose of showing that Startronix's officers intended to take the actions in the letter, but not to show any causation by SRA. Accordingly, the court told the jury during the course of the trial: "The court is admitting [the Attorney letter] but with some limitations [¶] not . . . for the truth of the matters asserted against [SRA] . . . [¶] not . . . for the purpose of agreeing that it supports the allegation in and of itself that there was some interference by [SRA]. [¶] I am admitting it simply because there is testimony that the letter exists and the letter was sent to [SRA]."

We agree with the trial court's ruling. Foundation for a writing requires authentication and meeting the secondary evidence rule. (Evid. Code, §1401.) "Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." (Evid. Code, § 1400.) The secondary evidence rule applies when a copy is offered and requires that the contents of the copy are proved to be the same as the original. (Evid. Code, §1521.)

Here, Fitch and Patton met the foundational requirements to admit the letter as a statement attributable to Startronix's management. The letter stated the intention of the board to fire Fitch and Patton, which made it potentially relevant to the cause of Fitch's and Patton's termination as it related to the disputed liability of SRA. As to authentication, the lawyer who wrote the letter, Carol Demmler (now Carol Carty), testified that she wrote it, signed it and sent it to SRA on the authorization of her client, Startronix. With respect to the secondary evidence rule, Carty's testimony was based

entirely upon the copy of the letter which Fitch and Patton were given upon termination. (Evid. Code, §§ 1401, 1521.)

Even though the trial court was correct in admitting the evidence as an indication of the actions Startronix management intended to take, it was also correct in excluding it to show any causation by SRA. It is settled law that evidence may be admissible for one party or purpose, but not for another. (Evid. Code, § 355.) The party seeking to offer the evidence must state a proper purpose, and in a jury trial the adverse party must request a limiting instruction. (*Daggett v. Atchison* (1957) 48 Cal.2d 655, 665.)

Here, the letter was correctly excluded as proof of a purported agreement referenced in the engagement letter between SRA and Startronix to have Fitch and Patton terminated, or as proof of Startronix's acceptance of such a requirement by SRA. Carty testified that she did not remember ever speaking to anyone at SRA. Mendoza testified that he did not request the letter, but received it and did not call Carty about it. He further testified that he did not agree or disagree with the letter; that it was a just a statement. Sanders testified that because of the problems that caused BDO to resign, SRA could not rely solely on the representations of Startronix's management. Further, he stated "the recommendations that they were giving needed to be supported. And the best way for them to be supported were by different legal counsel, and that's what this letter represents." The testimony did not establish a causative link between the contents of the letter and SRA. No one at SRA spoke to Carty, the author, and there was no evidence to show SRA required the actions that the letter outlines. In connection with the discussion

of a limiting instruction at trial, the trial court reached a proper ruling on this issue to exclude this evidence for such improper purpose.

The second evidentiary issue the trial court judge ruled upon concerned the fax footer at the bottom of the letter, which reads: "From: Strabala Ramirez Assoc Tel 714 852 1600 Jan. 3, 1997 4:47 pm [page number]." Fitch and Patton sought to have the fax footer used as proof that SRA required Startronix to fire them, as they were fired shortly after the date on the footer. In opposition, SRA sought to have the fax footer evidence excluded for lack of foundation and hearsay. The trial court decided to exclude the footer because it lacked foundation.

We agree that the fax footer lacks foundation and is hearsay. As stated above, foundation requires authentication and meeting the secondary evidence rule. (Evid. Code, §§ 1400 et seq., 1521.) Here, as to authentication, the only testimony given was that of Paul Strabala, the senior partner at SRA, stating that the footer appeared to indicate the document was faxed from the SRA fax machine, and that the number listed was that of SRA. There was no testimony that confirmed the date or time, or whether it was faxed at all. (No issue existed with the secondary evidence rule because it was the original fax footer; Evid. Code, § 1521.)

As discussed previously, hearsay is inadmissible absent an applicable exception. (Evid. Code, § 1200, et seq.) An exception to the hearsay rule is the contemporaneous statement. The exception allows a statement, made while the declarant is engaged in some conduct, to explain the conduct in which the declarant is engaged. (Evid. Code, § 1241.) The fax footer was hearsay because there was no direct proof it was faxed from

SRA to Startronix. No testimony was offered from anyone at SRA who remembered faxing it. Fitch and Patton argued that it was subject to the contemporaneous statement exception, because Gilbert handed them a copy of the letter with the fax footer when they were fired. However, it is purely conjecture that this evidence of a footer from a fax machine on a letter lacking foundation, dated several days prior to the terminations, amounted to an admissible statement that explained Gilbert's adherence to SRA's alleged requirement of the employment terminations.

Given these rulings on all of the evidentiary issues surrounding the Attorney Letter, what remains did not further Fitch's and Patton's allegations of interference or inducement. On its face, the letter stated the intention of Startronix's officers to fire Fitch and Patton as recited by their lawyers, Rutan & Tucker. However, Carty testified that she never spoke to anyone at SRA, and Mendoza testified that he did not require such conduct on behalf of SRA, but instead saw it as a statement of Startronix's management. Sanders testified that the letter represents recommendations by Startronix as to what it was going to do and that SRA relied on its contents. None of this proved any action was taken by SRA to interfere or to cause the actions detailed in the letter to occur. This evidence does not show the grant of nonsuit was erroneous.

The Management Representation Letter

Fitch and Patton offered the management representation letter as further proof of interference. On its face, the letter contained a list of declarations by Startronix management about the company and was signed by Fitch, Gilbert, Patton and Valle. As part of his auditing duties for SRA, Sanders wrote the letter. He testified that it was

standard practice for an auditor to prepare such a letter at the end of an audit, which was then given to the audited company for placement on its letterhead and signature.

The third paragraph of the letter stated, "Irregularities regarding management who have significant roles in the internal control structure or [whose] actions represent . . . a material effect on prior and current financial statements have been identified and disclosed to you. In addition, under our separate agreement, I (we) will take appropriate action to correct these irregularities prior to the issuance of the June 30, 1996 financial statements."

At trial, Fitch and Patton argued that this paragraph, in conjunction with Sanders' testimony and his knowledge of the fact that Startronix intended to fire them before he wrote it, was proof of SRA's interference with their contracts and economic advantage. However, on its face, the letter did not mention the terminations and the signatures of Fitch and Patton indicated their agreement to what was stated therein. Sanders testified that this paragraph encompassed not only the actions the Startronix board considered pursuant to the representations in the Attorney Letter, but also those actions that Mendoza testified about concerning the steps taken by Startronix to improve the functioning of the accounting department. As part of his auditing duties, Sanders wrote the letter on behalf of Startronix, and was essentially making declarations of Startronix. The letter does not show that SRA played a role in the terminations. Rather, at the time the letter was written, it disclosed Startronix's desire to fire Fitch and Patton, but SRA was not assured that the terminations would occur. This letter does not demonstrate SRA took action to cause such terminations.

Sanders' Activities

Fitch and Patton offered the actions and testimony of Sanders as evidence of interference. They alleged that Sanders' decision to work at Startronix after the completion of the audit was evidence that SRA provoked their terminations, so that SRA would benefit in the future from its relationship with Sanders after he moved to Startronix in a capacity similar to theirs. However, Strabala testified that Sanders had his own firm and when SRA needed extra help, Sanders would perform the work, and that is what happened on the Startronix audit. He also testified that SRA did not have a plan to get Sanders hired at Startronix.

Similarly, Mendoza testified that there was no benefit to SRA in Sanders obtaining employment at Startronix. Sanders testified that he never approached Startronix about a job, but that Valle approached him. Sanders worked at Startronix for two months, after which he returned to SRA as an employee. The Sanders connection itself and the related testimony did not show any attempt by SRA to get Sanders hired at Startronix or to get Fitch and Patton fired.

Based on the defects identified above, the trial court ruled correctly on the nonsuit motion regarding actionable interference. The plaintiffs' claim of wrongful interference with contractual relations required a showing of intentional acts to interfere with or disrupt the contract. Further, the claim of inducing breach of contract required meeting a higher burden of proving intentional acts to induce a breach of the contract. However, the evidence here amounts to nothing more than mere speculation, allowing this court to affirm the judgment. (*See Carson, supra*, 36 Cal 3d. p. 839.)

B. Nonsuit Grounds: No Admissible Negligence Theory

Fitch and Patton alleged negligent interference with prospective economic relations. "'The tort of *negligent* interference with economic relationship arises only when the defendant owes the plaintiff a duty of care.' [Citation.]" (*LiMandri, supra,* 52 Cal.App.4th at p. 348.) Here, Fitch and Patton claimed the duty of SRA was that of an auditor, not to interfere with the contracts of a company being audited. In opposition, SRA alleged that as auditors for Startronix they had no duty related to the employment of Fitch and Patton as individuals.

At trial, John Costello was offered as Fitch's and Patton's accounting expert. It must be noted that Fitch and Patton instructed Costello to assume that SRA had required their terminations. In accord with Fitch's and Patton's characterization of SRA's professional duty, Costello testified that auditors have a duty not to interfere with the contracts of the company audited. Such testimony does not demonstrate there was any actual interference with contract. The issue here was negligent interference with prospective economic relations – Fitch's and Patton's jobs with Startronix. With respect to their jobs, Costello testified it was not the duty of the auditor to make or be responsible for management decisions and that SRA, as auditors in this situation, had no obligation to Fitch and Patton regarding their jobs. Thus Fitch's and Patton's own evidence showed there was no duty owed to them and there was no evidence of any conduct giving rise to interference.

C. Nonsuit Grounds: No Evidence of Outrageous Conduct

Evidence of outrageous conduct is required for a showing of intentional infliction of emotional distress absent physical injury. The claim requires outrageous conduct by a defendant, evidence that the defendant intended to cause or was reckless in causing emotional distress, actual severe emotional distress, and both actual and proximate causes between the defendant's conduct and the plaintiff's emotional distress. (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 300.) In addition, the outrageous conduct must "'be so extreme as to exceed all bounds of that usually tolerated in a civilized community.' [Citation.]" (*Nally, supra,* at p. 300.)

The facts in *Nally* are illustrative. Nally committed suicide and his parents sought to recover against Nally's church for intentional infliction of emotional distress. Nally participated in pastoral counseling at the church with various members of its clergy. (*See Nally, supra,* 47 Cal 3d. at p. 284-286.) After leaving a mental institution because of a prior suicide attempt, he stayed briefly at the residence of a pastor at the church. (*Id.* at p. 286.) He inquired about the beliefs of the church on suicide, and was counseled by members of the clergy. (*Ibid.*) His parents alleged the church was liable for wrongful death because of its outrageous conduct in causing their son's suicide, leading to the intentional infliction of emotional distress. (*Id.* at p. 300.) The court did not find the church's involvement in this sequence of events to be outrageous. (*Id.* at p. 304.)

Here, SRA claimed in its nonsuit motion that no outrageous conduct existed. Akin to the pastor in *Nally* who was performing his job as a pastor, SRA was performing its job as an auditor. It reviewed the records of Startronix and as discussed above, there is

no evidence that the actions of SRA were anything but standard practice with respect to the audit of a company whose prior auditors quit because of financial management problems with that company. Nonsuit was properly granted on the plaintiffs' claim for intentional infliction of emotional distress. Reversal is warranted only if there is "'some substance to plaintiff's evidence upon which reasonable minds could differ.' [Citation.]" (*Carson, supra* 36 Cal. 3d at p. 839.) No such evidence exists here.

D. Nonsuit Grounds: No Evidence of Malice, Oppression or Fraud

Malice, oppression or fraud proven on the part of SRA would have justified an award of emotional distress and related punitive damages. However, since there was no evidence of any action taken by SRA to intentionally interfere with the rights of Fitch and Patton, we need not enter into any related discussion of malice, oppression or fraud.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McINTYRE, J.

O'ROURKE, J.